STATE OF MICHIGAN

COURT OF APPEALS

NEWTON WADE ROWLEY,

Plaintiff-Appellant,

v

NANCY MARIE PARKER, DOUGLAS CRYSTAL, and KIM CRYSTAL,

Defendants-Appellees.

UNPUBLISHED
April 20, 1999

No. 206174
Kent Circuit Court
LC No. 97-002882 NI

Before: O'Connell, P.J. and Jansen and Collins, JJ.

PER CURIAM.

Plaintiff appeals of right from the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff alleged that defendants furnished alcohol to a minor who became intoxicated and passed out while walking in a road. Plaintiff's car struck the minor, who was pronounced dead at the scene. Plaintiff alleged that as a direct and proximate cause of defendants' negligent acts in furnishing alcohol to the minor, he suffered extreme psychological injuries which required hospitalization and medication.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that plaintiff was attempting to pursue a cause of action for negligent infliction of emotional distress under circumstances in which no Michigan court had recognized such a cause of action. In response, plaintiff argued that defendants' violation of MCL 436.33; MSA 18.1004, which prohibits the furnishing of alcohol to a person under 21 years of age, created a civil cause of action. *Longstreth v Gensel*, 423 Mich 675; 377 NW2d 804 (1985). The trial court granted the motion, finding that plaintiff was not in the class of persons entitled to the protection of bystander recovery.

This Court reviews a trial court's ruling on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff argues that the trial court erred by granting defendants' motion. The issue in this case is whether a person who is a participant in a fatal automobile accident has a cause of action for damages for severe emotional distress resulting in physical symptoms. Plaintiff likens this case to *Clomon v Monroe City School Board*, 572 So 2d 571 (LA, 1990). In that case, the plaintiff struck and killed a four-year-old child after she had started to pass a school bus that had turned off its flashing lights and retracted its stop sign. In affirming the trial court's judgment in favor of the plaintiff, the Louisiana Supreme Court held that while the plaintiff could not recover under the bystander rule because she did not have a close relationship with the child, she could recover because the defendant owed her a duty as a motorist to await safe passage of students and to refrain from prematurely deactivating signals. Here, plaintiff argues that defendants' negligence in serving alcohol to a minor resulted in a rebuttable presumption of negligence that could be alleged by an individual injured as a result. *Longstreth, supra*, at 693, 694-696.

We affirm. The trial court found that plaintiff was not entitled to recovery under the bystander rule. The bystander rule allows a claimant to recover for emotional distress caused by observing the negligently inflicted injury on a third person, but only if the claimant is a member of the victim's immediate family. *Nugent v Bauermeister*, 195 Mich App 158, 162; 489 NW2d 148 (1992). Plaintiff was not attempting to recover under the bystander theory; rather, plaintiff was attempting to assert a cause of action under the social host theory set out in *Longstreth, supra*. Nevertheless, we will affirm a trial court's decision if the trial court reached the right result for the wrong reason. *Portice v Otsego County Sheriff's Dep't*, 169 Mich App 563, 566; 426 NW2d 706 (1988). The *Longstreth* Court held that by enacting MCL 436.33, the Legislature intended to protect minors who become intoxicated as a result of being served alcohol. *Longstreth, supra*, at 693. Plaintiff is not within that class of persons. Moreover, plaintiff was not injured by any action taken by a minor who became intoxicated as a result of being furnished alcohol. The facts of this case are clearly beyond the scope of social host liability set out in *Longstreth, supra*. *Clomon, supra*, is distinguishable in that there, the duty owed to the plaintiff was specified by statute.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Jeffrey G. Collins